

WM 20-468 PO
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
AVA OCCHIPINTI,

Index No.: 719616/2020

Plaintiff,

-against-

VERIFIED ANSWER

WALMART INC.,

Defendant.
-----X

The defendant, WAL-MART STORES EAST, LP i/s/h/a WALMART INC., by its attorneys, BRODY O'CONNOR & O'CONNOR, answering the Verified Complaint herein states upon information and belief:

1: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "1" and each and every part thereof.

2: Defendant denies the allegations set forth in paragraph marked "2" and each and every part thereof.

3: Defendant denies the allegations set forth in paragraph marked "3" except admits that WAL-MART STORES EAST, LP is the operator of the Westbury Walmart store.

4: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked "4" and "5" and refers all questions of law to the trial court.

5: Defendant denies the allegations set forth in paragraph marked "6" and each and every part thereof.

6: Defendant denies the allegations set forth in paragraphs marked “7” and “8” except admits that WAL-MART STORES EAST, LP is a foreign limited partnership registered to do and doing business in the State of New York.

7: Defendant denies the allegations set forth in paragraphs marked “9” and “10” and each and every part thereof.

8: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked “11” and each and every part thereof.

9: Defendant denies the allegations set forth in paragraph marked “12” and each and every part thereof.

10: Defendant denies the allegation set forth in paragraph marked “13” and refers all questions of law to the trial court.

11: Defendant denies the allegations set forth in paragraph marked “14” and each and every part thereof.

12: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked “15” and each and every part thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13: The plaintiff was guilty of culpable conduct, including contributory negligence and/or assumption of risk, and should an award be made to plaintiff, same should be diminished in the proportion which the culpable conduct and/or contributory negligence and/or assumption of risk attributable to the plaintiff bears to the culpable conduct and/or negligence which caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14: In the event that plaintiff recovers judgment against this answering defendant and it is determined that plaintiff's damages was caused in whole or in part by two or more joint tortfeasors, then defendant's liability herein for non-economic loss may not exceed its equitable share of said damages in accordance with its relative culpability, as provided by Section 1601 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15: Plaintiff's recovery, if any shall be reduced by the amount of any collateral payments received, in accordance with CPLR Section 4545.

WHEREFORE, defendant, WAL-MART STORES EAST, LP i/s/h/a WALMART INC., requests judgment dismissing the Complaint herein, together with costs and disbursements of this action.

Dated: Northport, New York
November 05, 2020

Yours, etc.

BRODY O'CONNOR & O'CONNOR
Attorneys for Defendant

By:

PATRICIA A. O'CONNOR
7 Bayview Avenue
Northport, New York 11768
(631) 261-7778
File No.: WM 20-468 PO

TO: MALLILO & GROSSMAN, ESQS,
Attorneys for Plaintiff
163-09 Northern Boulevard
Flushing, New York 11358
(718) 461-6633

AFFIRMATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the Courts of the State of New York, shows:

That affirmant is the attorney for the defendant in the within action; that affirmant has read the foregoing Verified Answer and knows the contents thereof; that the same is true to the affirmant's knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters, affirmant believes it to be true.

Affirmant further says that the reason this Verification is made by deponent and not by the defendant is that defendant is a foreign limited partnership.

The ground of belief as to all matters not stated upon deponent's knowledge are documents, correspondence and records maintained in your deponent's files and conversations and conferences has with the defendant.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: Northport, New York
November 05, 2020

PATRICIA A. O'CONNOR